Group III – Claim 21, drawn to the intermediate compounds of formula III, classified in class 544, subclass 379.

Group IV – Claims 22-24, drawn to the intermediate compounds of formula IV, classified in class 549, subclass 68.

The Office asserted that the above inventions are distinct, each from the other, and has required restriction to one of the inventions as set forth above.

Applicants hereby elect, with traverse, the subject matter of Group I, claims 1-13, 25, and 26. More specifically, Applicants respectfully submit that the restriction requirement set forth above is improper with regard to Groups II-IV. According to MPEP Section 803, restriction between inventions is proper only if they are able to support separate patents and the inventions are either independent or distinct. MPEP Section 803 further states that if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. (emphasis added)

Thus, MPEP Section 803 sets forth two criteria which must be met for a proper requirement for restriction between patentably distinct inventions:

A. The inventions must be independent or distinct as claimed; **and**

B. There must be a serious burden on the examiner if restriction is required.

In view of the above test, Applicants respectfully submit, that if the search and examination of an application can be made without serious burden, the Examiner must examine it on the merits, even if it includes claims to independent or distinct inventions.

In the instant application, the Office falls back on the classification system as a reason for the restriction by indicating that these inventions have acquired a separate status in the art as shown by their different classification. However, as observed in Ex part Milas, 71 USPQ 212 (P.O. Bd. App. 1946) "it is well known that the Office classification has been determined largely on the ground of convenience in searching and does not necessarily follow a scientific classification of the subject matter involved." Applicants further submit that since the Office may search this case by use of electronic databases, the Office is not limited by any particular arrangement of the United States Official Classification scheme.

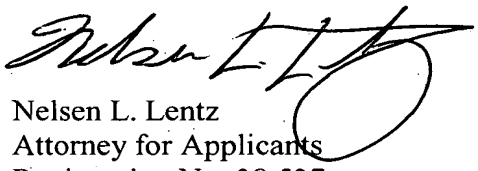
More specifically, Applicants submit that claims 14 and 15 possess only one variable which is Q. In addition, Claims 16 and 17 are directed to the same specific compound or a salt thereof. Finally, claims 22-24 also possess only one variable which is R. In contrast to a

typical Markush claim, the above-noted claims do not possess multiple variables with essentially an infinite claim scope or even a claim scope encompassing tens of thousands of compounds which must be searched. Rather, practically speaking, Applicants respectfully submit that claims 14-24 are of a very reasonable claim scope and would not impose an undue burden on the office in carrying out the required search and examination. Thus, Applicants submit that the requirements of the above-cited test for proper restriction have not been met and therefore the present restriction requirement is improper.

Moreover, Applicants respectfully submit that restriction in the instant case to 4 groups would unduly burden Applicants in the filing, prosecution, and maintenance of multiple divisional reissue patent applications. Applicant submit that a more reasonable restriction requirement would be a two-way division comprised of Group I as currently defined, and a Group II drawn to the intermediates covered in claims 14-24. Hence, withdrawal of the present restriction requirement and substitution of Applicants' suggested two-way restriction is respectfully requested.

Reconsideration of the outstanding restriction requirement in light of Applicants' comments is courteously requested.

Respectfully submitted,



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